

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6073 of 2007()

CRIME NO.167/07 OF KAKKUR POLICE STATION
.....

PETITIONER : ACCUSED:

E.P.SHAJI, S/O.ASOKAN,
KADAVANTHATTIL HOUSE, P.O.CHELANNUR,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT AND STATE:

1. SUB INSPECTOR OF POLICE, KAKKUR
POLICE STATION, KOZHIKODE.
2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A. No. 6073 OF 2007

Dated this the 24th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable under Secs.452 and 354 of the IPC. The F.I.R. was registered on 13/8/07 at 10.30 a.m. The alleged incident took place at 9.30 p.m. on 11/8/07. The crux of the allegations against the petitioner is that he trespassed into the house of the de facto complainant after making preparations and committed the bailable offences punishable under Secs.354, 324 and 506(i) of the IPC. The petitioner had a grievance that false allegations of illicit relationship between him and his sister-in-law were made by the father of the de facto complainant. Infuriated by that, the petitioner is alleged to have indulged in the overt culpable act. The victim, it is seen, had reached the Medical College

Hospital at 00.05 hours on 12/8/07 and had narrated the alleged cause to the Doctor. Investigation is in progress. The petitioner apprehends imminent arrest.

2. According to the petitioner, he is absolutely innocent. The petitioner contends that on account of animosity, such false allegations are raised. The real incident did not take place in the manner alleged by the prosecution. The petitioner relies on a wound certificate which shows that he had gone to the General Hospital, Kozhikode, at 11.15 p.m. on 11/8/07 and had raised an allegation of assault by three persons at 10.30 p.m. at his residence. According to the petitioner, apprehending that further proceedings may be initiated against the de facto complainant, such false allegations have been raised belatedly before the police by lodging the First Information Statement. It is prayed that the petitioner may be granted anticipatory bail.

3. In the nature of contentions, the learned Public Prosecutor was requested to take detailed instructions. The learned Public Prosecutor confirms that the parties are related to each other. The learned Public Prosecutor submits that no counter case has been registered. Even though there is a wound certificate shown as Annexure-A, no complaint whatsoever has been lodged by the petitioner before the police. When the

police went in searched of him to the hospital on receipt of intimation, it was found that he had, even without waiting for a discharge made himself scarce. Therefore it was not possible to record the statement of the petitioner also. The learned Public Prosecutor submits that the nature of injuries in Annexure-A show that they are very minor and insignificant injuries. The victim in this crime had alleged clearly at 00.05 hours when he reached the hospital that he was the victim of assault. The subsequent allegations raised by the petitioner cannot inspire confidence at all notwithstanding the fact that the petitioner had reached the hospital earlier in point of time. In any view of the matter, this is not a fit case where directions under Sec.438 of the Cr.P.C. can or ought to be issued in favour of the petitioner, submits the learned Public Prosecutor.

4. In the nature of the contentions raised, the learned Public Prosecutor was requested to place the Case Diary before me for my perusal. I have perused the same. Having considered all the relevant inputs, I am not persuaded to agree that there are any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear

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before the Investigating Officer or the learned Magistrate having jurisdiction and then seen regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge